

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8139 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAGDISH MANUSHANKAR JOSHI

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/03/99

ORAL JUDGEMENT

The grievance of the petitioner herein is that he has been detained illegally under order dated 10th August, 1998 passed by the Commissioner of Police, Ahmedabad under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("the PASA Act" for short) and has prayed for quashing of the aforesaid order and has also prayed for his immediate release from illegal detention.

2. Brief facts emerging from the grounds of detention (Annexure "B" to the petition) are that from one registered offence under the Bombay Prohibition Act and from the statements of three confidential witnesses, the detaining authority was subjectively satisfied that the petitioner is a bootlegger and is engaged in bootlegging activities alongwith his associate Madhuben and his activities were prejudicial for the maintenance of public order. Accordingly, order of detention was passed against the petitioner.

3. The impugned order of detention has been challenged on one ground that the activities of the petitioner were not prejudicial for maintenance of public order.

4. The subjective satisfaction of the detaining authority that the petitioner is a bootlegger is not vitiated in as much as there was sufficient material in the nature of registration of one offence under the Bombay Prohibition Act and the statements of three confidential witnesses confirming the involvement of the petitioner in bootlegging activities.

5. However, a bootlegger cannot be preventively detained under the PASA Act unless his activities were found prejudicial for maintenance of public order. It seems from the grounds of detention that from the above material, the detaining authority reached subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. The learned Assistant Government Pleader has supported the impugned order of detention and has urged that keeping in view the recovery of 387 bottles of foreign liquor and beer from the petitioner, his activities can be said to be prejudicial for maintenance of public order. He further contended that the statements of three confidential witnesses also indicate that the activities of the petitioner were prejudicial for maintenance of public order.

6. So far as the registration of the offence under the Bombay Prohibition Act is concerned, mere recovery of foreign liquor and beer in huge quantity cannot be said to be a material sufficient for reaching the subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. It seems that the petitioner committed breach of the provisions of the Bombay Prohibition Act for which he was sufficiently dealt with under the provisions of the aforesaid Act. He

did not create any situation obstructing search, seizure and arrest and as such, this offence could not be pressed in service for reaching the subjective satisfaction that his activities on that count were prejudicial for maintenance of public order.

7. Then remains the statements of three confidential witnesses. Relying upon the division bench pronouncement of this Court in case of Iqbal Husain Ahmedmiya Shaikh v. Commissioner of Police, Surat and Another [1989 (2) GLR 1005], learned Assistant Government Pleader contended that the principles of law laid down in this case can safely be applied to the facts of the present case and it can be held that the activities of the petitioner were prejudicial for maintenance of public order. After going through the pronouncement in Iqbal's case (supra), it can be observed that in the first instance, in this case, distinction between law & order and public order was explained. There can be no dispute on that proposition because if it is found that the activities of the detenu were found prejudicial for maintenance of public order, certainly, the order of detention could be held to be valid but if the activities were within the domain of law and order and the law and order was violated, the detention order cannot be sustained. The law laid down in this case cannot be applied in abstract. It has to be applied with reference to the facts of the case. The division bench in this case observed that;

"On the facts of the case, therefore, it can be said that the material clearly indicated that incidents to which the witnesses have deposed had not merely remained in the domain of minor disturbance of peace affecting individual victims but had disturbed even tempo of public life in the locality because the persons found present on the street at the time of the incidents had ran helter skelter and the persons residing in the locality had closed their doors and windows. On such material, no other view can be taken save and except the one that even tempo of public life got actually disturbed and disrupted because of the nefarious activities of the petitioner as a bootlegger. "

In the case under consideration, there is no deposition by the three witnesses that the persons residing in the nearby locality out of the fear of the incident or out of the petitioner's fear had closed doors and windows of their houses. Mere running of persons

helter skelter cannot be said to have created the situation prejudicial for maintenance of public order.

Out of the three witnesses examined in this case, two have deposed about the activities of the petitioner namely he was unloading the boxes of foreign liquor near temple. According to the learned Government Pleader, such activities near temple are bound to create disturbance of public order. Needless to say that till date at least in eight cases, this Court (presided over by me) has taken consistent view that if such activities take place near temple, mosque or religious place of Jain Community, it cannot be held that such activities are per se prejudicial for maintenance of public order. Witnesses in the instant case have not stated that the boxes of wine were being unloaded in the temple premises. They have also not deposed whether the boxes were closed and covered or the bottles could be easily seen. There is no indication from the statements of the witnesses that any member of public except the witnesses raised objection to the activities of the petitioner. If mere protest was made by the witness and he was beaten by the petitioner, it cannot be said that situation prejudicial for maintenance of public order was created.

Another witness has stated about the incident of unloading of foreign liquor near Junior School. The witness objected whereupon the petitioner became enraged and placed knife on the neck of the witness. On the face value of this statement, it can be said that no injury by knife was caused by the petitioner to the said witness. Same story was repeated that people gathered; the petitioner rushed towards them with knife but no injury was caused to them. As such, this incident was also not prejudicial for maintenance of public order.

The third witness has stated about another incident in which the petitioner asked the witness to carry the wine in his vehicle. The witness refused whereupon the petitioner abused him and beat him by giving kicks and fists blows. Again same story proceeded that people gathered whereupon the petitioner rushed towards them showing knife. No injury was caused to those persons.

There is no whisper in the statements of these three witnesses that the persons residing in the nearby locality closed doors and windows of their houses. There is no indication that the school or temple was situated in the vicinity and as such, the case of Iqbal Husain (supra) is distinguishable on facts and it cannot be said

that in the instant case, the activities of the petitioner were prejudicial for maintenance of public order, the activities of the petitioner were not prejudicial for maintenance of public order, he could not be detained under the PASA. The impugned order of detention has, therefore, become illegal. It has, therefore, to be quashed.

The petition, therefore, succeeds and is allowed. The impugned order of detention dated 10.8.1998 (Annexure "A" to the petition) is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

18.3.1999. (D.C.Srivastava,J.)

Vyas